

TERMS AND CONDITIONS

1. This Agreement applies to eligible packages tendered by the Customer at all U.S. 48 states origin shipping locations as mutually approved in writing by the California State and Local Governmental Agencies and FED EX to destinations listed in the FED EX Rate and Service Guide. Only locations and account numbers designated by California State and Local Governmental Agencies and FED EX and verified by FedEx will receive applicable discounts and receive revenue credit. Shipping Locations may be added to or deleted from this Agreement only by mutual written consent. To add or move a location, Customer(s) must give a seven (7) day written notification to their FED EX Worldwide Account Manager in order to receive the rates of this agreement.

Customer may have a customized Domestic Express Freight pricing program. Please refer to the applicable contract for specific pricing and contract terms. Customer's express Special Program(s) pricing is expiring and is replaced with the pricing identified herein.

2. Customer(s) agree to provide FED EX with daily shipping record documentation as specified by FED EX, including gross charges for packages shipped. If a Customer cannot supply FED EX with the daily gross package charges, charges will be based on a calculation of total volume tendered (less service offerings subject to incentive, e.g. Multiweight) multiplied by Customer's average package charge, as determined by FED EX.
3. Within thirty (30) days after award notification the State of California - DGS agrees to name FED EX as being a State Approved/Preferred Carrier.
4. FED EX will provide the following services to Customer during the life of this Agreement:
Assistance of:
 - Dedicated FED EX Worldwide Account Executive(s)
 - Business activity reports to DGS Transportation Department.

5. REPORTING REQUIREMENTS

The Contractor(s) shall deliver a summary report of each, "Participant's Total Monthly Activity Balance" to the Department of General Services (DGS) - Procurement Division (PD) - Transportation Management Unit (TMU) no later than the 30th calendar day of the following month of the summary closing date. Each line of the report should summarize the billing information for each agency or customer utilizing a Std. 213 for services contracted or a comparable local government document and the associated summaries. The following report information is requested:

- a. Contractor shall remit a monthly report to the DGS-PD-TMU for services performed under this contract. The monthly reports shall be submitted no later than the 30th Calendar day of the following month, and contain the following information:
 1. **Customer Name** (department, agency, city, county, school district, etc.)
 2. **Service Level** (department, agency, city, county, school district, etc.)
 3. **Total Quantity** (department, agency, city, county, school district, etc.)
 4. **Total Weight** (department, agency, city, county, school district, etc.)
 5. **Total Gross Amount USD**
 6. **Total Net Amount USD**
 7. **Destination Country Name**
 8. **Total Contractor payment for DGS-PD-TMU Administrative fee**

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- b. Contractor shall remit an annual report to the DGS–PD-TMU for services performed under this contract. The annual report shall be submitted no later than the 30th of January of each year, and shall contain all of the information in the monthly reports with the additional following information:
1. **Zones** (To and From)
 2. **Freight Collect** shipments
 3. **Subtotal sorted by Customer Name and Service Level**
 4. **Grand total of Quantity**
 5. **Grand Total of Gross Amount USD sorted by Service Level**
 6. **Grand Total of Net Amount USD sorted by Service Level**
 7. **Grand Total for Contractor payment for DGS-PD-TMU Administrative fee**
- c. Contractor shall provide monthly reporting in an electronic file with tab-delimited text accessible in Microsoft Word, Excel or Access.

COPIES OF ANY/ALL DOCUMENTS AND ADDITIONAL REPORTS THAT PERTAIN TO THIS CONTRACT WHEN REQUESTED BY THE CONTRACT ADMINISTRATOR SHALL BE PROVIDED TO THE STATE OF CALIFORNIA, DGS–PD–TMU.

6. Customer agrees to comply with all letter weight restrictions required under the Private Express Statute.
7. FED EX and Customer(s) agree that the rates, terms and conditions of this Agreement may not be extended or resold to any third party without prior written consent of FED EX.
8. Customer agrees to supply FED EX with a hard copy summary manifest at the time that the packages are tendered to FED EX for shipment and provide FED EX with Timely Upload of electronic Package Level Detail ("PLD") in a form acceptable to FED EX. PLD includes, but is not limited to, consignee's full name, complete delivery address, package weight and zone, and other specific package information that may be required from time to time by FED EX. Timely Upload is defined as the electronic transmission of PLD to FED EX at the time the packages are tendered to FED EX. Customer agrees to provide electronically generated labels on all packages tendered to FED EX in conformity with the terms of the FedEx Service Guide in effect at the time of shipment. Customer further agrees that all shipping locations will at all times use a FED EX Online or online compatible shipping solution that is approved and authorized by FED EX as such. In the event an authorized shipping location's computer is inoperable, a FED EX-approved manual label may be affixed to a package(s).
9. With the exception of FED EX's right to assign some or all of this Agreement to its affiliates or subsidiaries, this Agreement and the Customer's rights and obligations hereunder are not assignable or transferable. Any attempted assignment or transfer hereof without the prior written consent of FED EX shall be void and without force or effect.
10. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions between the parties within thirty (30) days of first entering into such discussions or as otherwise mutually agreed upon by the parties, then either party may initiate litigation in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the final decision.
11. This Agreement, its Attachments, the FED EX Service Guide and the FED EX Tariff in effect at the time of shipment, which are incorporated herein by reference, contain all the terms and conditions agreed to by the parties and supersede any prior agreements between the parties with respect to FED EX transportation services. The FED EX Rate and Service Guide and Tariff are maintained at local FED EX offices and on the Web at <http://www.fedex.com>. In the event of any ambiguity or conflict between the State of California – Carrier Agreement 5-05-98-01 and the FED EX Rate(s), Service Guides and Tariff in effect at the time of shipping, the State of California – Carrier Agreement 5-05-98-01 shall take precedence.

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12. This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract. See attached 4 pages of General Terms and Conditions (GTC) 304 and 5 pages of Contractor Certification Clauses (CCC) 304.
13. This agreement will remain in effect from the term stated on the Standard (Std.) 213 unless the Customer provides a thirty (30) day written notification of termination to FED EX. This Agreement may be amended or terminated by either party for any reason upon thirty (30) days prior written notice to the other party.
14. At the termination date of this Agreement, the State of California – DGS and FED EX upon mutual agreement may extend this Agreement for two additional years on a yearly basis approval or on a month-to-month basis, subject to all rate increases in effect and thereafter.
15. In the event a Customer tenders packages, which substantially exceed the number of packages tendered on a previous twelve (12) month average for that location, FED EX, in its sole discretion, may: (1) accept or decline the shipment, (2) adjust incentives, and/or (3) suspend any performance standards for on-time delivery. FED EX shall use commercially reasonable efforts to accommodate such special shipments provided that Customer notifies FED EX in writing at least one (1) week in advance.
16. Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
17. Except as otherwise provided herein, all notices, requests, demands or other communications required or permitted to be given or made under this Agreement shall be in writing, submitted to the parties' addresses set forth above and given by personal service, (in which case notice shall be deemed effective on the date it is delivered); FED EX Priority Overnight (in which case notice shall be deemed effective one Business Day after dispatch); or United States certified mail, return receipt requested, postage prepaid, (in which case notice shall be deemed effective on the third Business Day following its placement in the mail). FED EX and Customer may change, from time to time, their named respective representatives and addresses for the purpose of this section by written notice each to the other as herein provided.
18. Customer further agrees that discounts do not apply to Additional Charges which are defined as those additional and accessorial charges set forth in the FED EX Service Guide in effect at the time of shipping, which are subject to change at any time.
19. All delivery rates shall remain the same for the first twelve (12) months of the contract whereby commencing upon the awarded contract date. FED EX shall be allowed to increase Customer's discounted rates in accordance with the percentage increase in the latest FED EX Tariff published rates. The annual percentage rate increase shall commence after the first twelve months and/or upon the awarded anniversary date. The State will use the verified Contractor provided escalation percentage to determine the escalated contract rate(s) for the subsequent twelve-month period. This will be calculated by using the current contract rate(s) multiplied by the escalation percentage, then adding that result to the current rate(s) to determine the new contract rate(s).
20. Price escalations will take effect on the first payment after the escalation is approved by the Department of General Services. Price declines shall be effective immediately upon any public notification of the decline.

Price Escalation

- a. Prices shall be allowed to escalate with the published FED EX Tariff Rates schedule; however, only one price escalation shall be allowed within any twelve (12) month period.

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- b. No sooner than 300 days after of the award of the contract, or 300 days after the effective date wherein any price escalation was granted, the Contractor may petition to have the latest published Tariff rates of price percentage increase become the new basis of prices.

An Amendment will be issued to the MSA with the new rates effective no sooner than 30 days after the receipt of such a petition.

- 22. In billing Customer's shipments, FED EX will apply the established percentage discounts to the FED EX International Rate and Service Guide in effect at the time of shipping.
- 23. The applicable percentage of discounted rate will be from the standard FED EX Service Guide effective at the time of shipment. FED EX will apply the percentage discount rate to the transportation charges for every shipment that is billed to Customer.
- 24. The discount percentage rate will not apply to declared-value, accessories, custom brokerage, duties/taxes, or any other applicable per-package charges. These additional charges are explained in the FED EX Service Guide.
- 25. FED EX will apply the following percentage discount(s) to all letters and packages that Customer ships through these FED EX service options under the State of California service account number's. If a shipment's FED EX International Waybill does not indicate one of the specified account numbers, FED EX will not apply the percent of discount in billing Customer(s).
- 26. FED EX will bill the Customer weekly for International shipments and each statement will show the percent discount for each parcel shipped, as obtained from the FED EX International Waybill for that shipment.
- 27. A surcharge will apply for packages delivered to or from specific remote locations as stated in the FED EX Service Guide in effect at the time of shipping.
- 28. Customer is entitled to request refunds pursuant to the Money-Back Guarantee Policy provisions of the FedEx Service Guide for all FedEx Express services.
- 29. The current DGS administrative fee is set at 1.76% specified percentage of invoiced sales. The said administrative fee shall be added to the contractor billing and recovered from the participants requesting use of this contract. The Contractor is required to pay to DGS the recovered administrative fee in the form of a check payable to: Department of General Services, Procurement Division - Transportation Management. The Contractors must pay the assessed administrative fee, in a single check to the State of California within thirty days at the end of each calendar quarter plus include a report summary that substantiates the contract expenditures. Contractor will perform this service at no additional charge to DGS or participants.

The checks should be mailed to:

State of California – DGS
Procurement Division – Transportation Management
1700 National Drive
Sacramento, CA 95834-1965

DGS shall annually set the percentage for such administrative fee and shall notify Contractor of the percentage set each year. The administrative fee shall not increase by more than One (1) percent for the life of the contract. Contractor shall show said administrative fee as a separate line item on each Participants monthly invoice report. Payment of the administrative fee by the Contractor shall be made to DGS irrespective of reimbursement by each Participating State or Local Government Agency.